

Provisional Double Patenting Rejection

Claims 1-20 are provisionally rejected on the ground of non-statutory obviousness type double patenting as being unpatentable over claims 1-20 of copending application number 10/557,416.

Applicants respectfully request that this rejection be withdrawn for the following reasons.

A corresponding double patenting rejection was set forth in copending application 10/557,416. (Please see the Final Rejection dated June 18, 2009 in the '416 application.) A Terminal Disclaimer was filed in the '416 application on December 18, 2009, and was accepted by the PTO on December 29, 2009.

MPEP Section 804(B)(1) states that "if 'provisional' ODP rejections in two applications are the only rejections remaining in those applications, the Examiner should withdraw the ODP rejection in the earlier filed application thereby permitting that application to issue without need of a Terminal Disclaimer ... If both applications are filed on the same day, the Examiner should determine which application claims the base invention and which application claims the improvement (added limitations). The ODP rejection in the base application can be withdrawn without a Terminal Disclaimer, while the ODP in the improvement application cannot be withdrawn without a Terminal Disclaimer."

Accordingly, since a Terminal Disclaimer has already been filed in the '416 application, over the present application, it is not necessary that a Terminal Disclaimer be filed in the present application. Thus, it is respectfully requested that the Examiner withdraw the outstanding provisional double patenting rejection, and pass the application to issue.

Conclusion

In view of the foregoing remarks, it is submitted that the ground of rejection set forth by the Examiner has been overcome, and that the application is in condition for allowance. Such allowance is solicited.

If, after reviewing this response, the Examiner feels there are any issues remaining which must be resolved before the application can be passed to issue, the Examiner is respectfully requested to contact the undersigned by telephone in order to resolve such issues.

Respectfully submitted,

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